

No. 1-10-0781

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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JEFFREY M. LEVING, LTD.,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 08 M1 189097
	)	
DANIEL J. MANNING,	)	Honorable
	)	Rhoda D. Sweeney,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE PUCINSKI delivered the judgment of the court.  
Presiding Justice Lavin and Justice Sterba concurred in the judgment.

**ORDER**

¶ 1 *Held:* Plaintiff proved a breach of contract claim against defendant for attorney fees, and the trial court did not err in finding the fees reasonable. This court affirmed the decision of the trial court.

¶ 2 Plaintiff Jeffrey M. Leving, Ltd., filed a breach of contract claim against defendant Daniel J. Manning to recover \$16,417.44 in attorney fees for representation in a domestic dispute involving an order of protection and parentage action. Following a bench trial, the circuit court entered judgment against defendant in the amount of \$12,260 for attorney fees. Defendant now appeals. He contends plaintiff failed to prove a *prima facie* case that there was a breach of

contract. He further contends the court erred in finding the legal fees reasonable and in relying on the attorney bills as evidence absent testimony from the attorneys who performed the work reflected therein. We affirm.

¶ 3 At trial, Narciso Modesto, plaintiff's practice manager and attorney co-manager, testified that he oversaw the billing and collections at plaintiff's law firm. He testified that he had reviewed the records relevant to defendant's account and identified a contract executed between plaintiff and defendant on May 21, 2008. The contract, which was entered into evidence, required defendant to pay plaintiff an initial retainer of \$5,000 for legal services relating to an order of protection and parentage action, as well as "other relief the law firm may deem reasonable." The contract also provided hourly billing for services with payment due within 30 days of the invoice. The contract required the client to object within "ten (10) days of receipt of the bill," or the charges stated therein would be deemed "accepted and affirmed" by the client. Modesto identified this portion of the contract and testified that defendant paid only a \$2,500 partial retainer on signing the contract, but nothing more.

¶ 4 Modesto then identified two bills entered into evidence for services rendered on defendant's behalf. One was dated May 31, 2008, for services from May 21 to May 30 and the other was dated June 30, 2008, for services from June 2 to June 17. Modesto testified that the services identified in the bills related to the separate cases involving the parentage action and order of protection. He testified that the order of protection alleged physical abuse to the mother of the child and concerned defendant's possession of a firearm.

¶ 5 Defense counsel objected to Modesto's testimony regarding the services detailed in the bill. Defense counsel argued that Modesto merely prepared the bill, but did not perform the attorney services described therein, and was not listed as an expert. The court overruled

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counsel's objection, stating: "I think he has knowledge of the bill and he is able to testify regarding what is on the bill."

¶ 6 Modesto testified that the bills reflected in detail attorney meetings and conferences; telephone conversations; document review; document drafting; and other such work, all on behalf of defendant. Modesto testified that the total hours billed in May were 39.85 resulting in a \$10,380 charge. The \$2,500 retainer was applied to the bill. The total hours billed in June were 28.4 resulting in a \$7,703.20 charge. The additional expenses incurred were \$834.24 for a total bill of \$8,537.44. The total amount defendant owed plaintiff, according to the combined bills, was \$16,417.44.

¶ 7 Plaintiff called defendant as an adverse witness. Defendant testified that he had signed the May 21 contract for professional legal services with plaintiff. He acknowledged that he had agreed to be bound by the terms of the contract, including the payment of the \$5,000 retainer fee. He testified that he paid \$2,500 of the retainer, but did not pay any other fee, and the law firm appeared on his behalf in court on one occasion when he was also present. He did not believe the firm appeared on his behalf on another occasion, but he did not know. Defendant also agreed that "there was an issue regarding a compliance with an Agreed Order regarding a gun" and "an issue of parenting time in the case." He acknowledged that he received limited parenting time, but did not have it prior to representation. Defendant identified the May and June bills of service. He stated that he had received the bills, but had no knowledge whether any of the detailed work was performed. Defendant acknowledged the contract provision that any charges or monthly statements would be deemed accepted unless objected to within 10 days of receiving the bill. He testified that he had not lodged a written objection to the statement.

¶ 8 Defendant stated on cross-examination that he had gone to the law firm office on June 10, 2008, and asked Modesto for a copy of the bill, but Modesto said the bill was not available. That

same day, defendant terminated the contract with the law firm. He testified that the office represented him for approximately 15 days.

¶ 9 Modesto denied having met defendant; he did not recall defendant.

¶ 10 At the close of defendant's testimony, the court proceeded to discuss the bills, essentially line by line, with counsel for both parties and plaintiff's witness Modesto to determine whether the charges were reasonable. The court, for example, noted the "Associate's office time entry of Agreed Order regarding parenting time" was almost 30 minutes. The court stated: "I will take off minus 30. I know what it is like in those offices. It doesn't take that long." In another instance, the court examined the one-hour, twenty-minute charge on June 5, wherein the attorney "[c]onducted manual search of the criminal indexes in Cook County for client." The court asked Modesto what the charge entailed. Modesto responded that the attorney was required to "go to the location to run the index batch" and could not do so via computer. The attorney also required the services of a licensed private detective. The court suggested such a search likely would take only an hour and, accordingly, struck the additional 20-minute charge. The court sustained other charges for telephone calls, noting "oftentimes in these child custody cases there are a lot of phone calls and that is why these things are so expensive."

¶ 11 At the conclusion of this interchange, plaintiff's counsel recalculated the fees due in light of the court's rulings for a total owed of \$12,260. Defense counsel objected to the "reasonableness" of the figure given that work was performed within 15 days. The court responded "a lot happens in 15 days" and stated that she had taken off as much as possible and therefore overruled the objection.

¶ 12 This appeal followed. Although plaintiff has not filed an appellee brief in response, we may proceed in our review under the principles stated in *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976).

¶ 13 Defendant contends plaintiff failed to prove a *prima facie* case that there was a breach of contract and that the fees were fair, just, and reasonable. Defendant further contends the court erred in finding the legal fees reasonable and in relying on the bills issued by plaintiff as evidence absent testimony from the attorneys who performed the work reflected therein. We find no error.

¶ 14 Our standard of review is whether the lower court's judgment for attorney fees and costs was against the manifest weight of the evidence. *Wildman, Harrold, Allen and Dixon v. Gaylord*, 317 Ill. App. 3d 590, 598-99 (2000). A trial court's judgment is against the manifest weight of the evidence where its findings appear unreasonable, arbitrary, or not based on the evidence. *Wildman*, 317 Ill. App. 3d at 599.

¶ 15 In an action for attorney fees based on a breach of contract, the plaintiff-attorney's *prima facie* case includes proof of: (1) the existence of an attorney-client relationship, (2) the nature of the services rendered, (3) the amount of time expended, and (4) the result, if any, obtained for the client. *Wildman*, 317 Ill. App. 3d at 598. A plaintiff-attorney must also furnish sufficient facts and computations to establish, by a preponderance of the evidence, that the services rendered were necessary and that the amount of fees sought is fair, just and reasonable. *Wildman*, 317 Ill. App. 3d at 598. Where an attorney and client enter into an express contract for representation, the terms of the express contract control the compensation due the attorney. *Wildman*, 317 Ill. App. 3d at 601. In such a case, the hourly rate agreed to by the parties is the starting point of the court's analysis. *Wildman*, 317 Ill. App. 3d at 601.

¶ 16 Here, the parties acknowledged that they entered into an express contract for legal representation in defendant's cases involving a parentage action and order of protection. The contract provided for a \$5,000 retainer fee, with \$2,500 due upon signing the contract and the other half due within 30 days. Although defendant paid the \$2,500, he admitted that he did not pay the remaining amount or any other fees. The contract also provided that the hourly rate "for

office and non-court time" would be \$285 and \$325 "for court time, depositions and time outside the office (except as otherwise provided)." The contract stated that the same such services of senior attorneys would be \$350 and \$385, respectively. The contract further stated that paralegal services and non-lawyer investigative services would be billed at \$150 per hour.

¶ 17 Modesto testified that the attorneys performed the legal services detailed in the May and June bills in furtherance of defendant's cases. For example, Modesto noted an entry wherein a senior attorney spent 30 minutes speaking to the client regarding the case and to the child's legal representative; another entry reflected that the senior attorney spent 30 minutes on the telephone with defendant regarding parenting time on a Thursday and also on Father's Day. These bills listed in sufficient detail the services performed, the attorney who performed the services, and the time expended for the services; billing was calculated in a manner consistent with the contract. Defendant acknowledged that he received limited parenting time, which he did not have prior to representation. Plaintiff therefore proved a breach of contract. Contrary to defendant's contention, the attorneys who performed the work were not required to testify at trial. The contract, billing statements, and testimony of Modesto, established a fair and standard hourly rate agreed to by the parties and the amount due for the services performed. Defendant did not successfully contradict the evidence.

¶ 18 While the hourly rate agreed to by the parties is the starting point for a case like the present, a trial court still must assess whether the fees were reasonable. In assessing the reasonableness, the court must consider the time and labor required, the novelty and difficulty of the issues, the skill required, whether that employment of the attorney precludes other employment, the customary fee charged in the community, the money involved in the case, the results obtained, the nature and length of the professional relationship with the client, and the

attorney's reputation, experience, and ability. *Wildman*, 317 Ill. App. 3d at 601; see also Ill. S. Ct. Rules of Prof. Conduct R. 1.5(a) (eff. January 1, 2008).

¶ 19 Our review of the hearing and the billing statements submitted by plaintiff reveals that the trial court thoroughly examined the record, considered the parties' arguments, and evaluated the relevant factors before calculating the attorney's fees. The court did not allow fees for repetitive legal services, and reduced the requested award to eliminate billing hours it found to be unreasonable or excessive. The court's findings do not appear unreasonable, arbitrary, or against the evidence.

¶ 20 Although defendant's testimony suggested he contested the charges within the proper period under the contract, then terminated the attorney-client relationship, thus relieving him of the stated fees, the trial court apparently did not believe him. On appeal, the reviewing court must take questions of testimonial credibility as resolved in favor of the prevailing party and must draw from the evidence all reasonable inferences in support of the judgment. *Wildman*, 317 Ill. App. 3d at 599. A reviewing court will not reverse a trial court's decision if different conclusions can be drawn from contradictory testimony unless an opposite conclusion is clearly apparent. *Wildman*, 317 Ill. App. 3d at 599. In this case, an opposite conclusion is simply not "clearly apparent." We defer to the trial court's credibility findings in favor of the plaintiff-attorney. The judgment was not against the manifest weight of the evidence.

¶ 21 Finally, defendant appears to argue that plaintiff was required to file his petition for fees under section 508 of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/508 (West 2008)), rather than as a breach of contract claim. Defendant cites only one case, which does not support his contention, and makes no further argument. Defendant also appears to argue that plaintiff was required to secure an expert witness to testify about the fees. Defendant again cites only one case, which does not support his contention, and makes no further argument. A

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reviewing court is entitled to have issues clearly defined with pertinent authority cited and cohesive arguments presented; an appellant may not foist the burden of argument and research on this court, as it is neither our function nor obligation to act as an advocate or search the record for error. *People v. Universal Public Transportation, Inc.*, 401 Ill. App. 3d 179, 198 (2010).

Defendant has waived his claims. See Ill. S. Ct. R. 341(7) (eff. July 1, 2008).

¶ 22 We affirm the decision of the circuit court of Cook County.

¶ 23 Affirmed.